In the High Court of Punjab and Haryana, at Chandigarh.

Criminal Revision No. 184 of 1996

Date of Decision: 29.02.2008

State of Punjab

…Petitioner

Versus

Kamaljit Kaur alias Bholi and Another

…Respondents

CORAM: HON'BLE MR. JUSTICE KANWALJIT SINGH AHLUWALIA.

Present: Mr. Amit Chaudhary, Assistant Advocate General, Punjab, for the Petitioner-State.

None for the respondents.

Kanwaljit Singh Ahluwalia, J.

The present revision petition is directed by the State against the discharge of Kamaljit Kaur alias Bholi and Surinder Kumar alias Kala, accused. They were facing trial in case FIR No. 108 dated 31.12.1994 registered at Police Station Nawanshahr under Section 306 IPC. It is stated that Paramjit Singh son of Darshan Singh Hira and his son Amritpal alias Lovely committed suicide and left a suicide note to the effect that his wife Kamaljit Kaur alias Bholi is a woman of bad character. He is fed up with her. Therefore, he along with his son Lovely

Amritpal Singh is committing suicide. It is further stated that his wife has illicit relations with three persons namely, Palli of Commando Force, Ludhiana, Kala residing opposite to their house and Ujjal Singh, her real uncle. In the suicide note, he has expressed that in these black days, such bad women are living in the Society. It is further stated that his wife Bholi is a lady of loose character. It is further stated that since Palli has come as a tenant in the house, Bholi has become lady of loose character. It is further stated that Kala had noticed Bholi in objectionable manner with Kala. He wanted in suicide note that if law contemplates action against wedded woman, the law should take its course.

On 27.8.1994 at 3.00 P.M. dead bodies of young unknown person aged about 30 years and a child aged about 5-6 years were found near the maize field. These dead bodies were of Paramjit Singh and his son Amritpal alias Lovely. Post-mortem was conducted. Visceras were sent to the Chemical Examiner. The Chemical Examiner found the cause of death to be Aluminum Phosphide. Suicide note was found from the pocket of Paramjit Singh. After completion of investigation, challan was submitted against Kamaljit Kaur alias Bholi and Surinder Kumar alias Kala. The name of Ujjal Singh was placed in column No.2. Learned Sessions Judge, Jalandhar, while discharging the respondents had observed as under:-

> "It cannot be disputed that charge can be framed merely on strong suspicion and the evidence at the time of framing charge is not be considered meticulously. But I am of the considered opinion that

the circumstances of the case are such as, possibly, it cannot be stated that a prima facie case is made out against the accused within the meaning of Section 306 of the Code. Abetment of suicide is punishable U/s 306 of the Code. Section 107 of the Code defines abetment as under:-

> "107. A person abets the doing of a thing, who first, instigates any person to do that thing; or Secondly, Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or Thirdly, intentionally side, by any act or illegal omission, the doing of that thing.
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> Explanation I. A person who, by willful misrepresentation, or by willful concealment of a material fact which he is bound to disclose, voluntarily causes or procures or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing".

Thus, abetment can be either by instigation or by intentional aid or by illegal omission of doing a thing. So far as the death of child is

concerned it has to be assumed that Paramjit Singh, his father, had killed him by administering aluminum phosphide. There is nothing to show if any of the accused was present at the time of commission of suicide. For arguments sake, if it may be taken that the wife is a woman of easy virtue, even then, it cannot be stated if she had instigated or had aided the commission of suicide. The learned P.P. For the State has not been able to satisfy as to in which manner the commission of suicide has been instigated or aided by the accused. The husband might be feeling harassed or mentally disturbed with the alleged illicit relations of his wife but harassment and the mental disturbance do not constitute the offence of abetment. It looks that the deceased-husband was unable to control his wife and he out of frustration has not only committed suicide but has also snuffed the life of his son. The authority Charabhushan Bhimraj Bhushanwar and others (supra) is hardly of any help to the prosecution. I am of the firm view that from the fats of the case no prima facie case is made out against the accused. Though no direct authority is available pertaining to such like facts yet with advantage reference can be made to Shri Ram Vs. the State of U.P., AIR 1975 Supreme Court 175; Balbir Singh Vs. The State of

> Punjab, 1987(1) Crimes 76; Wazir Chand and another Vs. The State of Haryana, 1989(1) Crimes 173; State of Haryana Vs. Babu Ram & Anr. 1992(1) Criminal Courts Judgments 68 and Deepak Vs. State of M.P. 1994 Crl.L.J. 767".

I have perused the order passed by learned Sessions Judge, Jalandhar. In ***Sanju @ Sanjay Singh Sengar v. State of Madhya Pradesh 2002(Supp.1) J.T. 248***, it was held that the word 'instigate' denotes incitement or or urging to do some drastic or unadvisable action or to stimulate or incite. Presence of mens rea, therefore, is the necessary concomitant of instigation.

The conduct of wife of the deceased though may be conduct of bad wife but was not for the purpose to incite the deceased to commit suicide.

It was held by a Division Bench of this Court in ***Raj Kumar v. State of Punjab 1983(1) C.L.R. 660*** as under:-

> "12. Expression 'instigate' in the Concise Oxford Dictionary is defined as 'urge on incite, bring about by persuasion and in Webster, it has been defined as 'urge forward, provoke with synonyms of stimulate, urge, spur, provide tempt, incite, impel, encourage, animate. The word 'instigate' in common parlance would mean to go, to urge forward or to provoke, incite or encourage to do an act".

Every husband or wife may not be living a life of virtue. The conduct of any spouse, if is not upto the expectations of other spouse, and result into commission of suicide by another, abetment of suicide cannot be imputed to the other spouse.

Suspicion by one spouse regarding moral character of another if lead to commission of offence of suicide to say that other is guilty of abetment will be of far reaching consequences. In the present case, occurrence had taken place in the year 1994. After 13 years in a revisional Court, findings of learned lower Court cannot be set aside as same suffers from no infirmity.

Finding no merit in the present revision petition, the same is dismissed.

(Kanwaljit Singh Ahluwalia)
Judge

February 29, 2008
"DK"